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ARIZONA ATTORNEY GENERAL

July 30, 1954
Letter Opinion
No. 54-198-L

Mr. Henry F. Lesem, Administrator
Arizona State Tuberculosis Sanatorium
Tempe, Arizona

Re: Admission of aliens or non-citizens
to State Institutions.

Dear Mr. Lesem:

This is in reply to your letter of July 23, 1954, wherein you request our opinion concerning the following problem:

Are aliens or non-citizens eligible for admission to a State Institution?

With reference to your question, you also had asked us to rule on a specific situation which involves the following factors: An application for admission has been received by the Sanatorium for a person who resides in Phoenix, Arizona. The applicant was born in Mexico, came to Arizona in 1927, attended school in Arizona, but to date has not become a citizen of the United States. The applicant is married to a citizen of the United States, and has four (4) children, all of whom are citizens. Investigation of the applicant and his home show that at least two members of the household are tubercular, and that the applicant himself is a menace to the other members of his home.

A review of the state laws concerning admission to State Institutions reveals no provision which would have application to the tuberculosis sanatorium, as far as admissibility of aliens is concerned. Certain institutions are governed by Section 8-114, A.C.A. 1939, particularly as to the return of alien and non-resident public charges to their home state or county. This section, however, is apparently limited to public charges confined to hospitals and asylums for the insane, and institutions for the reformation of delinquent minors.

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Certain residency requirements are also found in the public welfare laws of this state, but such provisions would again not be applicable to the sanatorium, inasmuch as the sanatorium falls within the jurisdiction and control of the State Department of Health, and is in no way controlled by the laws concerning welfare assistance. (Chapter 140, Laws 1954, Twenty-First Legislature, Second Regular Session)

As to the specific fact situation given in your correspondence, the only provision given the force and effect of law and which would control the situation is Regulation 10 of the State Department of Health, which reads as follows:

"Method of Control of Tuberculosis

Regulation 10

All cases of tuberculosis, regardless of type, shall be reported to the local health officer and the State Department of Health.

When, in the opinion of the health officer or the State superintendent of health, proper isolation of a person affected with pulmonary tuberculosis in a communicable stage is not or can not be effectively maintained on the premises occupied by such person or persons, he may remove or required the removal of such person or persons to a hospital or other place designated by him, there to remain in isolation for such a time as the health officer deems such person or persons to be a menace to the public health."

It is apparent from the foregoing, that the question of whether a person shall be admitted to the sanatorium rests to a great extent with the discretion of the Health Department and the staff of that department which considers applications for admission. As we understand the procedure, a prospective patient is first diagnosed, his case history is then presented to the staff at a regular staff conference. After reviewing the diagnosis and case history of the applicant, the staff is then in a position to recommend admission or refuse admission, as the facts of each case warrant.

It is the opinion of the Department of Law that there is no general limitation as to admission of aliens to State Institutions, nor is there a limitation by law upon the admission

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of such aliens to the Tuberculosis Sanatorium, and until such time as the Legislature sees fit to place restrictions upon alien public charges, the decision as to whether they shall or shall not be accepted is vested in the State Department of Health, the staff advisers, and the administrator of the sanatorium. Naturally, any decisions of the above persons, or department, must be tempered with the proper exercise of the discretion granted to them.

Yours very truly,

JAMES P. BARTLETT
Special Assistant to
The Attorney General

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